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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1169 OF 2017

Shrikrishna Anantrao Panditrao & Anr. ... Petitioners

vs.

Padmanabh Anantrao Panditrao & Anr. ... Respondents

Mr. S.R. Borulkar a/w Ashish Pawar i/b. Manoj Patil for the Petitioners.

Mr. Amrut Joshi i/b. Atharva Dandekar for Respondent no.1.

Mr. V.B.Konde-Deshmukh, APP, for the Respondent-State.

CORAM : A.K. MENON, J.

DATE : 25th JULY, 2017

P.C.

1. By this petition, the petitioners seek to challenge orders dated 15th February, 2017 passed by the Additional Sessions Judge, Kolhapur, in Criminal Revision no.52 of 2015 and an order dated 17th March, 2015 passed by the Chief Judicial Magistrate, Kolhapur, issuing process in R.C.C.no.266 of 2015. The learned counsel for the petitioner states that although leave to amend was sought and granted on 24th April, 2017, today, on instructions, he states that he is not pressing the amendment.

2. It is the case of the petitioner that the complaint on which process came to be issued is the result of disputes amongst members of one family and is one in a series of proceedings initiated against the present complainant. Mr. Borulkar, the learned counsel for the petitioner submitted that evidence on record demonstrates that the complaint is devoid of any merit inasmuch as the allegation

against the petitioner is that the company Panditrao Mines and Minerals Private Limited was incorporated on the basis of false documents and that affidavits used for the purposes of showing that the respondent no.1 and his wife are directors of the company, are false and bogus. This allegation is made despite the fact that the complainants have benefited from the company.

3. He would submit that the order issuing process is bad since the complainant is the brother of the present petitioner and the parties are all related to the present petitioner. Accordingly, the order of issuance of process is not justified. It is further submitted that being aggrieved by the order issuing process, the present applicants had challenged the same in revision before the Additional Sessions Judge, Kolhapur insofar as it related to the allegations of offences under Section 417, 419, 420, 465, 466, 471 read with Section 34 of the Indian Penal Code. The revision was allowed in part.

4. Mr. Borulkar relied upon an observations of this Court in the case of Viral N. Chiniwala v/s. Mrs. Amy N. Irani & Anr. 2014 ALL MR (Cri) 2832. He relied upon paragraph 12 and 13 and submitted that the examination of the complainant by the Magistrate under Section 200 is very important and in the present case there was no application of mind and therefore the petitioners are entitled to relief in this petition.

5. While opposing the admission of the petition, the learned counsel for the respondent has relied upon the decision in the case of Smt. Nagawwa v/s.

Veeranna Shivalingappa Konjalgi and others (1976) 3 SCC 736 and submitted that the tests laid down in the said judgment have not been met and in the circumstances the order of Magistrate is based on sound principles and after relying upon the record and verification which was filed on 15th January, 2015.

6. Having considered the facts and the rival submissions, I find that the order dated 17th March, 2015 issuing process has made specific reference to the fact that the learned Magistrate, after perusing the complaint and the verification statement under Section 202, had come a prima facie finding before issuing process. In addition to the said finding and the verification statement, the Magistrate has recorded that the complaint and the verification statement had been read and that the complainant led evidence under Section 202 on 13th March, 2015.

7. Moreover, the revision application was allowed in part after considering the petitioners submissions. In the circumstances, I am of the view that there is no case for interference in the extra-ordinary writ jurisdiction of this Court. The order of the Magistrate cannot be faulted on the basis of the submissions made by the learned counsel for the petitioners. In the circumstances, I pass the following order:-

(i) Writ petition is dismissed.

(ii) No orders as to costs.

(A. K. MENON, J.)